

2005 DRAFTING REQUEST

Bill

Received: 10/14/2005

Received By: mdsida

Wanted: As time permits

Identical to LRB:

For: Scott Suder (608) 267-0280

By/Representing:

This file may be shown to any legislator: NO

Drafter: mdsida

May Contact:

Addl. Drafters:

Subject: Criminal Law - crimes agnst kids
Criminal Law - sex offenses

Extra Copies:

Submit via email: YES

Requester's email: Rep.Suder@legis.state.wi.us

Carbon copy (CC:) to: robin.ryan@legis.state.wi.us
cathlene.hanaman@legis.state.wi.us
anne.sappenfield@legis.state.wi.us

Pre Topic:

No specific pre topic given

Topic:

Mandatory minimum term of confinement for certain child sex offenses

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mdsida 10/17/2005	wjackson 10/17/2005		_____			S&L Crime
/P1			chaugen 10/18/2005	_____	sbasford 10/18/2005		S&L Crime
/1	mdsida 10/19/2005	kfollett 10/20/2005	chaugen 10/20/2005	_____	lemery 10/20/2005	mbarman 10/21/2005	

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

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Attn.

<END>

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By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - crimes agnst kids
Criminal Law - sex offenses**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Suder@legis.state.wi.us**

Carbon copy (CC:) to: **robin.ryan@legis.state.wi.us
cathlene.hanaman@legis.state.wi.us**

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Mandatory minimum term of confinement for certain child sex offenses

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/?	mdsida	/PI WLJ 10/17	Ch 10-17	Ch 10-17 SF			

FE Sent For:

<END>

Dsida, Michael

From: Hilgemann, Luke
Sent: Monday, October 17, 2005 11:34 AM
To: Dsida, Michael
Subject: RE: Exception for certain young offenders

Mike,

In talking with Rep. Suder and Rep. Honadel, they would like to leave the current exemption in place.

Luke Hilgemann

*Luke Hilgemann
Office of Rep. Scott Suder
Wisconsin's 69th Assembly District
Room 21 North, State Capitol
888.534.0069 or 608.267.0280*

From: Dsida, Michael
Sent: Monday, October 17, 2005 9:40 AM
To: Emerson, Anne; Hilgemann, Luke
Cc: Sappenfield, Anne
Subject: Exception for certain young offenders

When we met last week, Rep. Suder indicated that he wanted the minimum penalty to apply to cases that involve either sexual intercourse or sexual contact. But when we talked about the exception in current s. 301.45 (1m), we did not discuss how that exception treated sexual intercourse and sexual contact differently. Under that provision, if the offense involves sexual contact but not sexual intercourse, the age of the victim only matters for the purpose of determining the age gap between the victim and the offender. In other words, in a sexual contact case, if the court finds the exemption to be in the public interest, an offender who is no more than four years older than the victim can still be exempted from the registration requirements, even if the victim is under 12 years old. The 12-year-old-victim cutoff is only relevant in cases involving sexual intercourse.

Do you want to take the same approach in your bill? Or should the 12-year-old-victim cutoff apply in cases involving sexual contact in the same way that it would in cases involving sexual intercourse?

Mike Dsida
Legislative Reference Bureau
608/266-9867
michael.dsida@legis.state.wi.us

2005 BILL

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and ^{person} of the person is sentenced to prison,
how much of the sentence is to be served
in prison (the term of confinement) and how
much is to be served in the community
(the term of extended supervision)

Regen

1 AN ACT to renumber 946.47 (2) (a) and 946.47 (2) (b); to renumber and amend
2 946.47 (1) and 946.47 (2) (intro.); to amend 946.47 (3); and to create 939.618,
3 946.47 (1m) (b) and 946.47 (2r) of the statutes; relating to: mandatory terms
4 of confinement for certain child sex offenses, harboring a sex offender, and
5 providing penalties.

In general

Analysis by the Legislative Reference Bureau

Under current law, a court has broad discretion in structuring a sentence for a person convicted of a crime. The court may place the person on probation or sentence the person to jail or, if the offense is a felony, to prison; the court may impose a fine; or it may do both. The court also has broad discretion in determining the length of any jail or prison sentence that it imposes. Current law, however, specifies the sentence to be imposed for certain offenses. For example, unless a penalty enhancement applies or the person is a persistent repeater, if a person is convicted of first-degree sexual assault of a child or repeated acts of first-degree sexual assault of the same child, the prison confinement portion of the penalty may not exceed 40 years and the term of extended supervision may not be less than 25 percent of the length of the term of confinement in prison and may not exceed 20 years. If a person is convicted of second-degree sexual assault of a child or repeated acts of second-degree sexual assault of the same child, the prison confinement portion of the penalty may not exceed 25 years and the term of extended supervision may not be less than 25 percent of the length of the term of confinement in prison and may not exceed 15 years.

INS A →

BILL

Under this bill, if a person is convicted of first-degree sexual assault of a child or repeated acts of first-degree sexual assault of the same child, the court must impose a prison confinement sentence for the first offense of at least 25 years. Also if a person is convicted of second-degree sexual assault of a child or repeated acts of second-degree sexual assault of the same child, and a judge finds that the assault or the repeated assaults involved the use or the threat of force or violence, the court must impose a prison confinement sentence for the first offense of at least 25 years.

With some exceptions, current law prohibits a person from harboring or aiding a felon with intent to prevent the felon's apprehension. Current law also prohibits a person from destroying, altering, hiding, or disguising physical evidence or placing false evidence with intent to prevent the apprehension, prosecution, or conviction of a felon. A person who violates these prohibitions may be fined up to \$10,000 or sentenced to a term of imprisonment (consisting of a term of confinement in state prison followed by a term of extended supervision) of up to three and one-half years or both.

This bill prohibits a person from harboring or aiding a sex offender with the intent to prevent his or her apprehension. It also prohibits a person from destroying, altering, hiding, or disguising physical evidence or placing false evidence with the intent to prevent the apprehension, prosecution, or conviction of a sex offender. Finally, under the bill, a person who knows that a sex offender is not complying with his or her reporting requirement must notify a law enforcement agency of the noncompliance. A person who violates these provisions may be fined up to \$10,000 or sentenced to a term of imprisonment of up to six years or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 939.618 of the statutes is created to read:
- 2 **939.618 Mandatory minimum sentence for child sex offenses.** (1) If a
- 3 person is convicted of a violation of s. 948.02 (1) or 948.025 (1) (a), the court shall
- 4 impose a bifurcated sentence under s. 973.01 for a first offense. The term of
- 5 confinement in prison portion of the bifurcated sentence shall be at least 25 years.

Handwritten notes on the left margin: A circle containing 'INS B' with an arrow pointing to the first paragraph. Below it, a circle containing 'No ff' with an arrow pointing to the second paragraph. Further down, a circle containing '9' with an arrow pointing to the third paragraph.

Handwritten note: '(a)' with an arrow pointing to the text '(1) (a)' in the list item.

BILL

9 (b)

Not INS 3/2

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Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement. The court may not ^{place} put the defendant on probation.

~~(2) If a person is convicted of a violation of s. 948.02 (2) or 948.025 (1) (b), and if the court finds, without a jury and by a preponderance of the evidence, that the violation involved the use or a threat of force or violence, the court shall impose a bifurcated sentence under s. 973.01 for a first offense. The term of confinement in prison portion of the bifurcated sentence shall be at least 25 years. Otherwise the penalties for the crime apply, subject to any applicable penalty enhancement. The court may not put the defendant on probation.~~

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~~SECTION 2. 946.47 (1) of the statutes is renumbered 946.47 (2g), and 946.47 (2g) (intro.), as renumbered, is amended to read:~~

~~946.47 (2g) (intro.) Whoever Except as provided in sub. (2r), whoever does either any of the following is guilty of a Class I felony:~~

~~SECTION 3. 946.47 (1m) (b) of the statutes is created to read:~~

~~946.47 (1m) (b) "Sex offender" means a person who is subject to s. 301.45 (1g).~~

~~SECTION 4. 946.47 (2) (intro.) of the statutes is renumbered 946.47 (1m) (intro.) and amended to read:~~

~~946.47 (1m) (intro.) As used in In this section "felon":~~

~~(a) "Felon" means either one of the following:~~

~~SECTION 5. 946.47 (2) (a) of the statutes is renumbered 946.47 (1m) (a) 1.~~

~~SECTION 6. 946.47 (2) (b) of the statutes is renumbered 946.47 (1m) (a) 2.~~

~~SECTION 7. 946.47 (2r) of the statutes is created to read:~~

~~946.47 (2r) Whoever does any of the following is guilty of a Class H felony:~~

~~(a) Intentionally withholds information from, or intentionally fails to notify, a law enforcement agency about the sex offender's noncompliance with the reporting~~

BILL

1 requirements under s. 301.45 even though the person knows or should know that the
2 sex offender is not in compliance.

3 (b) With intent to prevent the apprehension of a sex offender, harbors or aids
4 him or her.

5 (c) With intent to prevent the apprehension, prosecution, or conviction of a sex
6 offender, destroys, alters hides, or disguises physical evidence or places false
7 evidence.

8 **SECTION 8.** 946.47 (3) of the statutes is amended to read:

9 946.47 (3) ~~This section Subsection (2g) does not apply to the felon, to the felon's~~
10 ~~spouse or to a parent, grandparent, child, grandchild, brother, or sister of the felon,~~
11 ~~whether by blood, marriage, or adoption.~~

12 **SECTION 9. Initial applicability.**

13 (1) This act first applies to offenses committed on the effective date of this
14 subsection.

15 (END)

1

INSERT A

The court's discretion, however, is limited by statutes that set maximum penalties for most crimes, including sex offenses. In general, if a person is convicted of first-degree sexual assault of a child (having sexual contact or sexual intercourse with a child who is less than 13 years old) or repeated acts of first-degree sexual assault of the same child (both of which are Class B felonies), the maximum sentence length is 60 years, and the maximum initial term of confinement is 40 years. If a person is convicted of second-degree sexual assault of a child (a Class C felony involving having sexual contact or sexual intercourse with a child who is less than 16 years old), the maximum sentence length is 40 years, and the maximum initial term of confinement is 25 years.

In a limited number of cases, the court's discretion is also limited by statutes that set minimum sentences. In sex offense cases, two such statutes may be relevant. First, if a person is convicted of first- or second-degree sexual assault (having sexual contact or sexual intercourse with a person without that person's consent under certain aggravating circumstances) after having been convicted of such an offense previously, the court must sentence the person to prison, and the initial term of confinement must be at least three and a half years. Second, if a person is convicted of a second serious child sex offense under the "two-strikes" statute, the person must be sentenced to life imprisonment without the possibility of release to parole or extended supervision.

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INSERT B

No FF → sentence the person to prison, and the initial term of confinement must be at least 25 years, unless the exemption described below applies. In addition, the bill changes the law regarding having sexual contact or sexual intercourse, through a threat or use of force or violence, with a person who is less than 16 years old. Under the bill, that offense is reclassified as first-degree sexual assault of a child.

The bill also specifies circumstances under which the minimum term of confinement requirement does not apply. Under the bill, the court may impose a shorter sentence, upon the defendant's request, if it finds, by clear and convincing evidence, that: 1) the violation did not involve sexual intercourse by use or threat of force or violence; 2) the violation did not involve sexual intercourse with a victim who was less than 12 years old; 3) at the time of the offense, the defendant was less than 19 years old and no more than 5 years older than the victim; and 4) it is not necessary, in the interest of public protection, for the court to impose the mandatory minimum term of confinement. The bill specifies that: 1) the court must hold a hearing if the defendant files a motion asking for the exemption; 2) the victim must be provided an opportunity to make or submit a statement regarding the motion; 3) the court may require the defendant to be examined by a physician, a psychologist, or another expert to help the court determine whether it would be in the interest of public protection for the court to impose the mandatory minimum term of confinement; and 4) the court may not place the defendant on probation, even if the exemption applies.

3

1 **INSERT 3/2**

2 a defendant who is convicted of a violation of s. 948.02 (1) or 948.025 (1) (a)

3 **INSERT 3/9**

4 (2) This section does not apply if s. 939.62 (2m) (c) applies.

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(3) (a) Subsection (1) (a) does not apply to a violation of s. 948.02 (1) (a) or

6 948.025 (1) if all of the following apply:

7 1. The violation did not involve sexual intercourse by use or threat of force or
8 violence.

9 2. The violation did not involve sexual intercourse with a victim under the age
10 of 12 years.

11 3. At the time of the violation, the person had not attained the age of 19 years
12 and was not more than 5 years older than the child.

13 4. It is not necessary, in the interest of public protection, for the court to impose
14 the sentence described in sub. (1) (a).

15 (b) If a defendant believes that par. (a) 1. to 4. *apply*, he or she may move a court
16 to make a determination of whether he or she satisfies those criteria. The defendant
17 shall file a motion made under this paragraph before sentencing and shall send a
18 copy of it to the district attorney. The district attorney shall make a reasonable
19 attempt to contact the victim of the crime to inform the victim of his or her right to
20 make or provide a statement under par. (d).

21 (c) A court shall hold a hearing on a motion filed by a person under par. (b). The
22 district attorney may appear at the hearing.

23 (d) Before deciding a motion filed under par. (b), the court shall allow the victim
24 of the crime to make a statement in court at the hearing under par. (c) or to submit

1 a written statement to the court. A statement under this paragraph must be relevant
2 to whether the person satisfies the criteria specified in par. (a).

3 (e) 1. Before deciding a motion filed under par. (b), a court may request the
4 defendant to be examined by a physician, psychologist, or other expert approved by
5 the court. If the defendant refuses to undergo an examination requested by the court
6 under this subdivision, the court shall deny the motion without prejudice.

7 2. If a defendant is examined by a physician, psychologist, or other expert under
8 subd. 1., the physician, psychologist, or other expert shall file a report of his or her
9 examination with the court, and the court shall provide copies of the report to the
10 defendant and, if he or she requests a copy, to the district attorney. The contents of
11 the report shall be confidential until the physician, psychologist, or other expert has
12 testified at the hearing held under par. (c). The report shall contain an opinion
13 regarding whether it would be in the interest of public protection for the court to
14 impose the sentence described in sub. (1) (a) and the basis for that opinion.

15 3. A defendant who is examined by a physician, psychologist, or other expert
16 under subd. 1. is responsible for paying the cost of the services provided by the
17 physician, psychologist, or other expert, except that if the defendant is indigent the
18 cost of the services provided by the physician, psychologist, or other expert shall be
19 paid by the county. If the person claims or appears to be indigent, the court shall refer
20 the person to the authority for indigency determinations under s. 977.07 (1), except
21 that the person shall be considered indigent without another determination under
22 s. 977.07 (1) if the person is represented by the state public defender or by a private
23 attorney appointed under s. 977.08.

24 (f) At the hearing held under par. (c), the defendant has the burden of proving
25 by clear and convincing evidence that he or she satisfies the criteria specified in par.

1 (a) In deciding whether the defendant has satisfied the criterion specified in par. (a)
2 4., the court may consider any of the following:

3 1. The ages, at the time of the violation, of the defendant and of the child with
4 whom the defendant had sexual contact or sexual intercourse.

5 2. The relationship between the defendant and the child with whom the
6 defendant had sexual contact or sexual intercourse.

7 3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to
8 the child with whom the defendant had sexual contact or sexual intercourse.

9 4. Whether the child with whom the defendant had sexual contact or sexual
10 intercourse suffered from a mental illness or mental deficiency that rendered the
11 child temporarily or permanently incapable of understanding or evaluating the
12 consequences of his or her actions.

13 5. The probability that the defendant will commit other violations in the future.

14 6. The report of the examination conducted under par. (e).

15 7. Any other factor that the court determines may be relevant to the particular
16 case.

17 SECTION 1 939.623 of the statutes is renumbered 939.618, and 939.618 (title)
18 of the statutes, as renumbered, is amended to read:

19 939.618 (title) ~~Increased penalty;~~ Mandatory minimum sentence for
20 repeat serious sex crimes.

21 SECTION 2. 939.624 of the statutes is renumbered 939.619, and 939.619 (title)
22 of the statutes, as renumbered, is amended to read:

23 939.619 (title) ~~Increased penalty;~~ Mandatory minimum sentence for
24 repeat serious violent crimes.

1 **SECTION ~~3~~** 948.02 (1) [✓] of the statutes is renumbered 948.02 (1) (intro.) and
2 amended to read:

3 948.02 (1) Whoever ~~has~~ does any of the following is guilty of a Class B felony:

4 (a) Has sexual contact or sexual intercourse with a person who has not attained

5 the age of 13 years is ~~guilty of a Class B felony.~~ ^{plain}

6 History: 1987 a. 332; 1989 a. 31; 1995 a. 14, 69; 2001 a. 109.

6 **SECTION ~~4~~** 948.02 (1) (b) of the statutes is created to read:

7 948.02 (1) (b) Has sexual contact or sexual intercourse with a person who has
8 not attained the age of 16 years by use or threat of force or violence.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-3859/P1
CMH&MGD:kjf&wlj/jh
stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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and the maximum term of imprisonment

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1 AN ACT to renumber and amend 939.623, 939.624 and 948.02 (1); and to create
2 939.617 and 948.02 (1) (b) of the statutes; relating to: ^{sa} mandatory terms of
3 confinement for certain child sex offenses and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, a court has broad discretion in structuring a sentence for a person convicted of a crime. In general, the court may place the person on probation or sentence the person to jail or, if the offense is a felony, to prison; the court may impose a fine; or it may do both. The court also has broad discretion in determining the length of any sentence that it imposes and, if the person is sentenced to prison, how much of the sentence is to be served in prison (the term of confinement) and how much is to be served in the community (the term of extended supervision).

The court's discretion, however, is limited by statutes that set maximum penalties for most crimes, including sex offenses. In general, if a person is convicted of first-degree sexual assault of a child (having sexual contact or sexual intercourse with a child who is less than 13 years old) or repeated acts of first-degree sexual assault of the same child (both of which are Class B felonies), the maximum sentence length is 60 years, and the maximum initial term of confinement is 40 years. If a person is convicted of second-degree sexual assault of a child (a Class C felony involving having sexual contact or sexual intercourse with a child who is less than 16 years old), the maximum sentence length is 40 years, and the maximum initial term of confinement is 25 years.

In a limited number of cases, the court's discretion is also limited by statutes that set minimum sentences. In sex offense cases, two such statutes may be relevant.

First, if a person is convicted of first- or second-degree sexual assault (having sexual contact or sexual intercourse with a person without that person's consent under certain aggravating circumstances) after having been convicted of such an offense previously, the court must sentence the person to prison, and the initial term of confinement must be at least three and a half years. Second, if a person is convicted of a second serious child sex offense under the "two-strikes" statute, the person must be sentenced to life imprisonment without the possibility of release to parole or extended supervision.

Under this bill, if a person is convicted of first-degree sexual assault of a child or repeated acts of first-degree sexual assault of the same child, the court must sentence the person to prison, and the initial term of confinement must be at least 25 years, unless the exemption described below applies. In addition, the bill changes the law regarding having sexual contact or sexual intercourse, through a threat or use of force or violence, with a person who is less than 16 years old. Under the bill, that offense is reclassified as first-degree sexual assault of a child.

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The bill also specifies circumstances under which the minimum term of confinement requirement does not apply. Under the bill, the court may impose a shorter sentence, upon the defendant's request, if it finds, by clear and convincing evidence, that: 1) the violation did not involve sexual intercourse by use or threat of force or violence; 2) the violation did not involve sexual intercourse with a victim who was less than 12 years old; 3) at the time of the offense, the defendant was less than 19 years old and no more than 5 years older than the victim; and 4) it is not necessary, in the interest of public protection, for the court to impose the mandatory minimum term of confinement. The bill specifies that: 1) the court must hold a hearing if the defendant files a motion asking for the exemption; 2) the victim must be provided an opportunity to make or submit a statement regarding the motion; 3) the court may require the defendant to be examined by a physician, a psychologist, or another expert to help the court determine whether it would be in the interest of public protection for the court to impose the mandatory minimum term of confinement; and 4) the court may not place the defendant on probation, even if the exemption applies.

and

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 SECTION 1. 939.617 of the statutes is created to read:
- 2 **939.617 Mandatory minimum sentence for child sex offenses.** (1) (a) If
- 3 a person is convicted of a violation of s. 948.02 (1) or 948.025 (1) (a), the court shall

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1 impose a bifurcated sentence under s. 973.01. The term of confinement in prison
2 portion of the bifurcated sentence shall be at least 25 years. Otherwise the penalties
3 for the crime apply, subject to any applicable penalty enhancement.

4 (b) The court may not place a defendant who is convicted of a violation of s.
5 948.02 (1) or 948.025 (1) (a) on probation.

6 (2) This section does not apply if s. 939.62 (2m) (c) applies.

7 (3) (a) Subsection (1) (a) does not apply to a violation of s. 948.02 (1) (a) or
8 948.025 (1) if all of the following apply:

9 1. The violation did not involve sexual intercourse by use or threat of force or
10 violence.

11 2. The violation did not involve sexual intercourse with a victim under the age
12 of 12 years.

13 3. At the time of the violation, the person had not attained the age of 19 years
14 and was not more than 5 years older than the child.

15 4. It is not necessary, in the interest of public protection, for the court to impose
16 the sentence described in sub. (1) (a).

17 (b) If a defendant believes that par. (a) 1. to 4. applies, he or she may ~~move a~~
18 ^{request that the} court ~~to~~ make a determination of whether he or she satisfies those criteria. ^{To make such a request} The
19 defendant shall file a motion ~~made under this paragraph~~ before sentencing and shall
20 send a copy of it to the district attorney. The district attorney shall make a reasonable
21 attempt to contact the victim of the crime to inform the victim of his or her right to
22 make or provide a statement under par. (d).

23 (c) A court shall hold a hearing on a motion filed by a person under par. (b). The
24 district attorney may appear at the hearing.

SECTION 1

1 (d) Before deciding a motion filed under par. (b), the court shall allow the victim
2 of the crime to make a statement in court at the hearing under par. (c) or to submit
3 a written statement to the court. A statement under this paragraph must be relevant
4 to whether the person satisfies the criteria specified in par. (a).

5 (e) 1. Before deciding a motion filed under par. (b), a court may request the
6 defendant to be examined by a physician, psychologist, or other expert approved by
7 the court. If the defendant refuses to undergo an examination requested by the court
8 under this subdivision, the court shall deny the motion without prejudice.

9 2. If a defendant is examined by a physician, psychologist, or other expert under
10 subd. 1., the physician, psychologist, or other expert shall file a report of his or her
11 examination with the court, and the court shall provide copies of the report to the
12 defendant and, if he or she requests a copy, to the district attorney. The contents of
13 the report shall be confidential until the physician, psychologist, or other expert has
14 testified at the hearing held under par. (c). The report shall contain an opinion
15 regarding whether it would be in the interest of public protection for the court to
16 impose the sentence described in sub. (1)(a) and the basis for that opinion.

17 3. A defendant who is examined by a physician, psychologist, or other expert
18 under subd. 1. is responsible for paying the cost of the services provided by the
19 physician, psychologist, or other expert, except that if the defendant is indigent the
20 cost of the services provided by the physician, psychologist, or other expert shall be
21 paid by the county. If the person claims or appears to be indigent, the court shall refer
22 the person to the authority for indigency determinations under s. 977.07 (1), except
23 that the person shall be considered indigent without another determination under
24 s. 977.07 (1) if the person is represented by the state public defender or by a private
25 attorney appointed under s. 977.08.

1 (f) At the hearing held under par. (c), the defendant has the burden of proving
2 by clear and convincing evidence that he or she satisfies the criteria specified in par.

3 (a). In deciding whether the defendant has satisfied the criterion specified in par. (a)
4 4., the court may consider any of the following:

5 1. The ages, at the time of the violation, of the defendant and of the child with
6 whom the defendant had sexual contact or sexual intercourse.

7 2. The relationship between the defendant and the child with whom the
8 defendant had sexual contact or sexual intercourse.

9 3. Whether the violation resulted in bodily harm, as defined in s. 939.22 (4), to
10 the child with whom the defendant had sexual contact or sexual intercourse.

11 4. Whether the child with whom the defendant had sexual contact or sexual
12 intercourse suffered from a mental illness or mental deficiency that rendered the
13 child temporarily or permanently incapable of understanding or evaluating the
14 consequences of his or her actions.

15 5. The probability that the defendant will commit other violations in the future.

16 6. The report of the examination conducted under par. (e).

17 7. Any other factor that the court determines may be relevant to the particular
18 case.

19 **SECTION 2.** 939.623 of the statutes is renumbered 939.618, and 939.618 (title),
20 as renumbered, is amended to read:

21 **939.618 (title) ~~Increased penalty; Mandatory minimum sentence for~~**
22 **repeat serious sex crimes.**

23 **SECTION 3.** 939.624 of the statutes is renumbered 939.619, and 939.619 (title),
24 as renumbered, is amended to read:

1 **analysis INSERT A**

Ⓐ The bill also changes the maximum term of imprisonment for first-degree sexual assault of a child and for repeated acts of first-degree sexual assault of the same child. Under the bill, those offenses remain Class B felonies, but the court may sentence the person to a term of imprisonment of any length (subject to the minimum term of confinement), including life imprisonment.

2 **INSERT 2/0**

3 **SECTION 1.** 939.30 (2) of the statutes is amended to read:

4 939.30 (2) For a solicitation to commit a crime for which the penalty is or may
5 be life imprisonment, the actor is guilty of a Class F felony. For a solicitation to
6 commit a Class I felony, the actor is guilty of a Class I felony.

7 History: 1977 c. 173; 1989 a. 121; 1991 a. 153; 1995 a. 448; 2001 a. 109.

8 **SECTION 2.** 939.31 of the statutes is amended to read:

9 **939.31 Conspiracy.** Except as provided in ss. 940.43 (4), 940.45 (4) and 961.41
10 (1x), whoever, with intent that a crime be committed, agrees or combines with
11 another for the purpose of committing that crime may, if one or more of the parties
12 to the conspiracy does an act to effect its object, be fined or imprisoned or both not
13 to exceed the maximum provided for the completed crime; except that for a
14 conspiracy to commit a crime for which the penalty is or may be life imprisonment,
the actor is guilty of a Class B felony.

15 History: 1977 c. 173; 1981 c. 118; 1985 a. 328; 1995 a. 448.

16 **SECTION 3.** 939.32 (1) (a) of the statutes is amended to read:

17 939.32 (1) (a) Whoever attempts to commit a crime for which the penalty is or
18 may be life imprisonment is guilty of a Class B felony.

19 History: 1977 c. 173; 1981 c. 118; 1983 a. 438; 1987 a. 332; 1989 a. 336; 1991 a. 17; 1993 a. 98, 486; 1997 a. 295; 2001 a. 91, 109; 2003 a. 36, 321; 2005 a. 14.

20 **INSERT 6/5**

21 no ff, except that, subject to s. 939.617 (1), if applicable, and notwithstanding the
maximum term of imprisonment specified in s. 939.50 (3) (b), the person may be
sentenced ^{to} a term of imprisonment of any length, including life imprisonment

1 **INSERT 6/10**

2 **SECTION 4.** 948.025 (1) (a) of the statutes is amended to read:

3 948.025 (1) (a) A Class B felony if at least 3 of the violations were violations of
4 s. 948.02 (1), except that, subject to s. 939.617 (1), if applicable, and notwithstanding
5 the maximum term of imprisonment specified in s. 939.50 (3) (b), the person may be
6 sentenced ^{to} a term of imprisonment of any length, including life imprisonment.

7 History: 1993 a. 227; 1995 a. 14; 2001 a. 109.

8 **SECTION 5.** 973.01 (2) (a) of the statutes is amended to read:

9 973.01 (2) (a) *Total length of bifurcated sentence.* Except as provided in par. (c),
10 the total length of the bifurcated sentence may not exceed the maximum period of
11 imprisonment specified in s. 939.50 (3), if the crime is a classified felony, or the
12 maximum term of imprisonment provided by statute for the crime, if the crime is not
13 a classified felony, plus additional imprisonment authorized by any applicable
14 penalty enhancement statutes. This paragraph does not apply to a crime under s.
948.02 (1) or 948.025 (1) (a).

15 History: 1997 a. 283; 2001 a. 109; 2003 a. 33.

16 **SECTION 6.** 973.01 (2) (b) 1. of the statutes is amended to read:

17 973.01 (2) (b) 1. For a Class B felony, other than a felony under ^{s.} 948.02 (1) or
948.025 (1) (a), the term of confinement in prison may not exceed 40 years.

18 History: 1997 a. 283; 2001 a. 109; 2003 a. 33.

19 **SECTION 7.** 973.01 (2) (d) (intro.) of the statutes is amended to read:

20 973.01 (2) (d) *Minimum and maximum term of extended supervision.* (intro.)
21 The term of extended supervision may not be less than 25% of the length of the term
22 of confinement in prison imposed under par. (b). and, ~~for a classified felony,~~ is subject
to whichever of the following limits, if any, is applicable:

23 History: 1997 a. 283; 2001 a. 109; 2003 a. 33.

SECTION 8. 973.01 (2) (d) 1. of the statutes is amended to read:

1 973.01 (2) (d) 1. For a Class B felony, other than a crime under s. 948.02 (1) or
2 948.025 (1) (a), the term of extended supervision may not exceed 20 years.

3 **History:** 1997 a. 283; 2001 a. 109; 2003 a. 33.

3 **SECTION 9.** 973.01 (3) of the statutes is amended to read:

4 973.01 (3) NOT APPLICABLE TO LIFE SENTENCES. If a person is being sentenced for
5 ~~a felony that is punishable by~~ to life imprisonment, he or she is not subject to this
6 section but shall be sentenced under s. 973.014 (1g).

7 **History:** 1997 a. 283; 2001 a. 109; 2003 a. 33.

7 **SECTION 10.** 973.014 (1g) (a) 1. of the statutes is amended to read:

8 973.014 (1g) (a) 1. The person is eligible for release to extended supervision
9 after serving 20 years or, if s. 939.617 (1) applies, after serving 25 years.

History: 1987 a. 412; 1989 a. 31; 1993 a. 289; 1995 a. 48; 1997 a. 283, 326; 1999 a. 32.

Barman, Mike

From: Emerson, Anne
Sent: Friday, October 21, 2005 9:36 AM
To: LRB.Legal
Subject: FW: Draft review: LRB 05-3859/1 Topic: Mandatory minimum term of confinement for certain child sex offenses

It has been requested by <Emerson, Anne> that the following draft be jacketed for the ASSEMBLY:

FW: Draft review: LRB 05-3859/1 Topic: Mandatory minimum term of confinement for certain child sex offenses